



MIDWEST CENTER FOR PSYCHOTHERAPY & SEX THERAPY

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Psychosexual Evaluation Report

Name: Matthew R. Howard
DOB: 03/09/1995
Date of evaluation: 02/16/2018
Date of Report: 06/02/2018

Referral:

Attorney Joseph Bugni requested that a psychosexual evaluation be conducted with their client, Matthew R. Howard, for the purposes of assessing sexual dysfunction, risk for future sexual misbehavior, and establishing a mental health profile.

Informed Consent:

Matthew R. Howard was interviewed on 02/16/2018 for the purpose of conducting a psychosexual evaluation. The purpose of the interview was explained to Mr. Howard and the limits to confidentiality were outlined. The procedure of conducting the psychosexual evaluation was outlined for Mr. Howard and he was given the opportunity to ask questions in regard to the evaluation procedure. It was also explained to Mr. Howard that the report prepared as a result of this evaluation would be shared with his legal team. It was explained that his legal counsel and he could determine who the evaluation would be shared with in the future, and that the content of the evaluation report may be shared with the court and used in decisions regarding his current offense. He appeared to understand the guidelines and limits to confidentiality. He voluntarily agreed to participate in the assessment. This evaluation interview took place in a lawyer's meeting space within the visiting area of the Dane County Jail, Public Safety Building.

Tools Used as Part of Evaluation:

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| • Clinical Interview with Mr. Howard | 02/16/2018 |
| • Test of General Reasoning Ability (TOGRA) | 02/16/2018 |
| • Symptom Checklist – 90 (SCL-90) | 02/16/2018 |
| • Child Pornography Offender Risk Tool (CPORT) | 05/24/2018 |
| • Static-99r | 05/24/2018 |
| • Sexual Violence Risk – 20 (SVR-20) | 05/24/2018 |

Other Material Reviewed for this Report:

1. Assorted materials compiled by Zoie Bauer, Social Work intern assigned to the Federal Defender Services of Wisconsin, Inc.
2. Function Report conducted for the Social Security Administration (SSA) dated 05/03/2013

3. School records from the Madison Metropolitan School District (MMSD)
4. UW Health AODA Assessment conducted by Jessica M. Pankratz, LCSW, CSAC dated 01/25/2012
5. Neuropsychological Report written by Nancy Viscovich, PhD dated 10/03/2008
6. Assorted Dean Healthcare and St. Mary's Hospital Psychiatric and Medical Records

Relevant Background:

Matthew R. Howard is a 23-year-old male who was born and raised in Dane County, generally in the Madison area. Due to the fact that a large amount of record material was provided to this evaluator, much of the evaluation session conducted in the Dane County Jail on 02/16/2018 focused on current psychological functioning and psychosexual development. The relevant background information summarized in this section was obtained primarily through record materials. Mr. Howard was raised primarily by his mother, although extended family assisted with this process, as his mother worked to sustain the household. Mr. Howard has one sibling, a sister who is approximately 18 years older than him. Because of this significant age difference, Mr. Howard was raised primarily as an only child. Records indicate that Mr. Howard often presented as an impulsive and labile youth. He affirmed these reports during his clinical interview on 02/16/2018. Because there were a number of significant stressors that occurred throughout his early life, that impacted both he and his mother, their relationship appeared to be somewhat strained and volatile. Mr. Howard acknowledged this during his clinical interview and appears to currently have a negative affect toward his mother. Mr. Howard earned average to low average grades while in school, in spite of the fact that intellectual testing often placed him in the above average range of potential. His attention deficit, cognitive deficits, social skill deficits, and behavioral dysregulation significantly impacted his performance in school. He was required to repeat the 11th grade. Mr. Howard shared that his cohort graduated high school in 2013, but he didn't graduate until 2015.

Records indicate that Mr. Howard has an extensive history with medical and psychiatric services. He was given several psychiatric diagnoses and treated with a variety of medications as early as age four. The list of diagnoses given to Mr. Howard includes: ADHD, Tourette's Syndrome, learning disability (reading), Asperger's Syndrome, Autism, Depressive Disorder, Anxiety, Dyspraxia¹, Cognitive Disorders, Sensory Integration problems, and Sleep Disorder. One of several complicating factors associated with Mr. Howard's clinical history is that he has been assessed with above average intellectual potential. What this general means is that he appears to be able to function better than his behavior suggests. Individuals with this profile tend to experience the backlash of frustration and skepticism of teachers and other caregivers, who view the behaviors as simply oppositional or conduct disordered. Mr. Howard has shared on more than one occasion that he rarely engaged with the service providers he encountered as a youth and felt that they were only there as a result of his mother's frustration with his behavior and attitude. More recently (i.e., the last few years) Mr. Howard has begun to recognize that his behavior has indicated a number of areas of dysfunction.

¹ Dyspraxia is a brain-based condition that makes it hard to plan and coordinate physical movement. Children with dyspraxia tend to struggle with balance and posture. Dyspraxia can affect social skills too. Children with dyspraxia may behave immaturely even though they typically have average or above-average intelligence.

Mr. Howard's first trauma was experienced via a medication error when he was 16-months-old. He presented with his parents to the Emergency Room with symptoms of a hernia. During the process of sedation for the pain he was experiencing in preparation for hernia surgery, he was accidentally given an overdose of medication in a "lytic cocktail"². There has been no clear determination as to any long-term effects of this incident. The next major trauma in Mr. Howard's life appears to be the sudden and unexpected death of his father, when he was age 4. Reports suggest that Mr. Howard returned home from church with his mother and found his father unresponsive in his bed. There appears to have been a significant impact on Mr. Howard's behavior following this incident. The next significant event that appears to have had a major impact on Mr. Howard was the passing of his grandmother. Mr. Howard was reportedly very close to his grandmother who died slowly from cancer when Mr. Howard was an adolescent. He noted that he was involved in the "nursing care" provided in the home, which had a traumatic impact on him. These events likely contributed to intensifying his own concerns when he was diagnosed with cancer (Classical Hodgkin Lymphoma, nodular sclerosis) in 2013.

Mr. Howard has received services of one type or another throughout his life. These include psychiatric services (psychotropic medication³) in the community, Individualized Education Plans (IEP) throughout his time in school, and psychotherapy interventions (talk-therapy) for a variety of concerns. Although Mr. Howard's clinical picture presents as extensive and complex, there does appear to be some common themes that surface throughout his life. Mr. Howard has consistently displayed impulsive and, at times, reckless behavior. This includes both activities as well as social interactions. The cognitive filter that controls decisions and contributes to one's ability for self-regulation appears to be a primary deficit area for Mr. Howard. This is reflected in numerous reports that identify concerns with his executive functioning, frontal lobe activity, and psychosocial development. A complete presentation of these neuropsychological processes is beyond the scope of this report, however research in these areas has improved significantly over the last two decades, with the advent of neuro-imaging technology. This will be discussed in more detail later in this report.

Psychiatric notes and mental health reports regularly reported conflict and dysfunction in the relationship between Mr. Howard and his mother. The traumas mentioned earlier in this report were experienced by Mr. Howard's mother as well. Any reflection on her role as a parent and contributing factor in his life must also consider her struggles and challenges as well. To exacerbate these challenges is the fact that Mr. Howard's interpersonal deficits increased the likelihood that he would view his mother as an adversary and give enhanced attention to her flaws as a parent, while failing to recognize her struggles in an empathic manner. This is understandable during his earliest developmental years, when he may have been subjected to an unattached parenting style. The fact that her grief, depressive symptoms, and sense of being overwhelmed in her role as a single parent with a special

² A mixture of drugs injected intravenously to produce sedation, analgesia, amnesia, hypotension, hypothermia, and blockade of the functions of the sympathetic and parasympathetic nervous systems during surgical anesthesia. The "lytic cocktail" given to Mr. Howard was reported to consist of Demerol, Phenogren, and Thorazine.

³ His medication regimens have primarily consisted of medications for ADHD, mood, and sleep difficulties.

needs youth, would be lost on a child who was prone to anger, resentment, and emotional detachment as a coping style. It seems that Mr. Howard also coped through disassociation⁴ using fantasy. This disassociation expanded from fantasy to adapting his identity and behavior to the peer group with which he hoped to associate.

Psychosocial and Psychosexual Functioning:

Reports of Mr. Howard's psychosocial history vary depending on the source of the report. He stated that he has had a number of friends throughout his life, but others (his sister, mother, and other collateral sources interviewed by Zoie Bauer) have reported that he seemed to be able to make friends but struggled to keep friends. As is often the case with individuals who have a clinical profile like Mr. Howard, the tendency is to "burn-out" others due to a self-centered and/or labile demeanor. Mr. Howard shared that he has had issues with his weight throughout his life, which resulted in teasing and bullying when he was in school. The fact that he received special education services and lacked age-appropriate social skills were also likely key factors in his struggles with psychosocial interactions. Mr. Howard reported that from the age of puberty on-set (about age 14) to early adulthood (about age 20), he lacked confidence to engage in social interactions with females, unless they were friends he had known for some time.

Although there were clearly behavioral concerns with Mr. Howard during most of his developmental years, there was no indication of sexual delinquency. Mr. Howard appeared to be open in his discussion of his sexual development. He shared that he remembered his earliest sexual thoughts as young as age nine. Mr. Howard reported that he first masturbated before age ten. He proceeded to share a few incidents of sexual exploration with same age peers. Mr. Howard shared that he first began viewing pornography on the Internet at age 10 and by the age of 12 was viewing material that he classified as "wild and crazy". The material was not illegal but contained bizarre erotic behaviors that involved an assortment of paraphilias. Mr. Howard acknowledged that he explored sexual behavior with other male friends his age. Mr. Howard shared that his sexual orientation has always been heterosexual, and the behavior with male peers was confusing to him as well. Mr. Howard shared that he became addicted to playing video games at some point in his early adolescence, adding that his mother required him to see a psychiatrist at that time to address this compulsive behavior.

Mr. Howard reported that when he was in the 10th grade he underwent nasal surgery and believed he became addicted to the Percocet he was prescribed for pain at that time. A AODA assessment that was conducted at the University of Wisconsin Hospital and Clinics – Adolescent Alcohol and Drug Assessment Intervention Program UWHC-AADAIP) in January 2012 determined that Mr. Howard did not have a need for AODA services, but a recommendation for general mental health services was made⁵. Mr. Howard also increased his use of Internet pornography during his 10th grade school year, which he attended at Shabazz High School. He stated that he preferred images of females that were his age and "nonprofessional." He stated that he found images of this type on a site called "4chen". Mr.

⁴ Dissociation is a psychological process whereby someone disconnects from reality, their thoughts and feelings, or loses memories and their sense of identity. It is a coping mechanism from the mind, to protect a person from a traumatic event and allow them to "switch off" and distance themselves from a situation they cannot handle and observe it rather than being part of it.

⁵ Reference AODA assessment report dated 01/25/2012 written by Jessica M. Pankratz, LCSW, CSAC.

Howard reported that many of these images were of females that appeared to be his age or older; however, occasionally younger images would be in the files that he downloaded. Mr. Howard denied any interest in these images and stated that he would ignore or delete them. Mr. Howard stated that as he got older, so did the age of the females he was interested in. Mr. Howard admitted that he sometimes struggles with determining the difference in ages of older adolescent females and younger adolescent females. He also admitted that two factors also impacted his judgment regarding the age of the adolescent images. The first was that he graduated high school two years after his cohort, thus spending a fair amount of social time with adolescent females that were younger yet considered peers. The second was that he had several friends that were older who were involved in relationships with younger females.

Mr. Howard stated that his first experience with sexual intercourse took place when he was age 21 and involved a female that was age 18. He reported that he began using the “Tinder” App, a social media application used for meeting potential dating and sexual partners. Mr. Howard stated that he had “1500 matches” on this application⁶. Mr. Howard stated that having so many individuals recognizing his Tinder profile was “a confidence builder.”

Mr. Howard’s life and priorities took a turn in a different direction in 2013 when he was diagnosed with Classical Hodgkin Lymphoma, nodular sclerosis. He was age 18 at the time and reported that he underwent chemotherapy for approximately 8-9 months. Mr. Howard shared that he felt extremely ill during the chemo therapy and endured “weird” sensory experiences with his sense of taste and touch. To make matters worse, Mr. Howard admitted that after his chemo therapy he became obsessed about the “long-term effects” of this treatment and started exploring possible side effects on the Internet. He admitted that his obsessively researching this medical topic was likely a mistake but added that he was quite “traumatized” by the whole experience (i.e., actual side effects, fear of other side effects, overall fear of dying from cancer, etc.) from 2013 to 2016.

In summary, Mr. Howard presents a history that seems to be somewhat behind the stage of development congruent with his chronological age. He appears to be psychosocially immature, which is partially due to his impaired cognitive capacity for social and interpersonal skills, as well as the normal delays in maturity that are evident in some adolescent males. Mr. Howard has experienced a fair amount of trauma and subsequent dysfunction in his young life and his challenges with depleted coping skills and a limited ability to seek and benefit from the support of others, including family, has made many of these events more challenging.

Psychological Functioning:

Along with the clinical impression obtained through the interview and record review, psychological testing was done using a measure of general psychopathology. Mr. Howard openly discussed his history of mental health diagnosis and treatment and provided documentation that validated his reports. For further diagnostic clarification an empirically

⁶ Although there is no general statistics on the average number of matches for this dating app, a brief online review suggests that 1500 matches over a similar given period of time would be highly unlikely. Therefore, this is likely a gross exaggeration by Mr. Howard.

validated screening tool was in this evaluation to assess the presence of any additional symptoms that fit criteria set for formal diagnosis. The measure of general psychopathology used by this evaluator was the Symptom Checklist-90-R (SCL-90-R). The SCL-90-R is a multidimensional tool that assesses nine symptoms of psychopathology and provides three global distress indices. The primary symptom dimensions that are assessed are somatization, obsessive-compulsive, interpersonal sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, and psychoticism. The items from this list that were endorsed at a significant level by Mr. Howard will be described and interpreted below. The three global indices are Global Severity Index (GSI), Positive Symptom Total (PST), and Positive Symptom Distress Index (PSDI). The global indices are indications of general functional impairment based on the depth (GSI) and breadth (PST and PSDI) of psychopathological symptoms endorsed by Mr. Howard

The scoring procedure for the SCL-90-R recommends that statistically derived scores around “60 or higher” be considered in the clinically significant range (i.e., potential need for intervention). Mr. Howard’s scores that would meet this threshold were:

Somatization Disorder = 61
Obsessive-Compulsive Disorder - 66
Depressive Mood = 64
Anxiety = 68
Hostility = 62
Paranoid Ideation = 72
Psychoticism = 69

Global Severity Index = 67
Positive Symptom Distress Index = 64
Positive Symptom Total = 64

This psychological profile from Mr. Howard’s responses with the SCL-90-R is indicative of one that is experiencing a high degree of subjective distress that is both intense and experienced across a range of experiences and functional domains. This type of profile is more often the expression of a cry for help than evidence of a specific disorder⁷. Mr. Howard has an extensive history of having difficulty in multiple levels of functioning (i.e., home, school, social activity) and a minimal set of experiences in which he has successfully resolved or coped with his distress. The elevated hostility, paranoid ideation, and psychoticism scales suggest that Mr. Howard views his problems as more acute than those of others and that his support network is experienced as more controlling (e.g., interfering with his sense of autonomy) than helpful. He has trouble distinguishing the problems that are the product of external circumstances (grief related to the loss of supportive loved ones) and those that are internally generated (loss of support due to his resistant and/or agitated demeanor). He has a similar issue with distinguishing the difference between internally and

⁷ In other words, it is unlikely that an individual would experience the level of distress across so many diverse areas of functioning suggested by Mr. Howard’s SCL-90 profile. It is more likely that his profile is a form of communicating that he feels that he is struggling with severe distress, feels marginally capable to deal with this distress himself, and feels alienated from any source of support.

externally generated coping resources. The etiology of these deficits is centered in the same areas of his brain as his social and interpersonal skill deficits. Our ability for emotion-based learning, the ability to generate an objective and productive perspective, and the development of psychosocial maturity all require effective communication between our logic mind (frontal lobe) and our emotional mind (amygdala). Individuals who regularly display characteristic that suggest poor communication between these two major brain regions are often diagnosed as having Autism Spectrum Disorder (ASD). This happens for good reason, as research into the development of autism suggests that either genetic factors (i.e., heredity) or environmental factors (i.e., complications in pregnancy or birth) appear to affect how brain nerve cells, or neurons, communicate with each other in persons with ASD. In some cases of ASD, the disorder appears to affect how entire regions of the brain communicate with each other, as suggested above. Mr. Howard has been labeled with a broad array of diagnoses, several that are indicative of symptoms that suggest deficits in cognitive functioning related to information processing. A subset of these also indicate social skills and interpersonal deficits. Although Mr. Howard's diagnostic profile has fluctuated through the years, his primary diagnoses has always included the type of organic brain dysfunction that would impair decision making as it relates to socially appropriate decision-making. This is different form of pathology than deviant or personality disordered behavior.

Cognitive Functioning:

Intelligence testing was not indicated for this assessment due to evidence of average functioning by the interview subject. The initial clinical impression based on the interview and review of school records is that Mr. Howard functions at the average range of intellectual potential. During the interview Mr. Howard did not impress as having delusional thought, although his perception of reality appeared somewhat distorted at times. His ability to track thoughts and respond in an appropriate manner was sufficient, but at times he struggled to remain focused and on topic. Throughout the evaluation participated in a cordial and cooperative manner.

Mr. Howard was reasonably groomed and displayed good hygiene, considering he is currently detained in the Dane County Jail. He maintained good eye contact with the interviewer and appeared to understand the questions presented. Rapport was established easily; however, it was clear that Mr. Howard is sensitive to critical comments. This was evident in his nonverbal demeanor but may be attributed to the content and purpose of this interaction. His range of emotional expression was within normal limits and appropriate to content. Mr. Howard denied perceptual disturbances, such as hallucinations, and there was no evidence of such. He was oriented to time, place, person, and situation. There was no evidence of deficits in the area of short- and long-term memory processing.

Mr. Howard seemed to have reasonable insight into his situation and possible outcomes. Mr. Howard displayed the capacity for positive judgment and displays a clear capacity for empathy and concern for the well-being of others. This was evident in his willingness to consider the potential harm that can result from the exploitation of youth involved in the sex industry.

The measure of cognitive functioning used in this evaluation was the Test of General Reasoning Ability (TOGRA). The TOGRA is a speeded measure of reasoning ability and

problem-solving skills that is standardized for use with subjects from ages 10 to 75 years. The TOGRA consists of items that assess verbal, nonverbal, and quantitative reasoning and problem-solving skills through tasks that are inductive as well as deductive in nature. Mr. Howard earned a general reasoning index (GRI) score of 124, with a 95% confidence interval placing his true score between 114 and 130. His score falls within the “moderately above average” range of scores and within the 95th percentile of the sample for which this measure was normed. This suggests that Mr. Howard has a score above average and that only 5% of the individuals used to establish the norms for Mr. Howard’s age range scored higher. Scores such as this would indicate that Mr. Howard has very good skills in organizing and gathering information when he is focused on a particular task or problem. For example, this would indicate that Mr. Howard has the ability to engage in abstract problem-solving, often referred to as “fluid intelligence” or “fluid reasoning”. This cognitive function is evident in one’s ability to think logically and solve problems in novel situations, independent of acquired knowledge. It is the ability to analyze novel problems, identify patterns and relationships that underpin these problems and then extrapolate insights gathered from these patterns and relationships using logic. Such a skill was not evident in the early testing conducted with Mr. Howard, which often focused more on acquired, or crystallized knowledge. An encouraging aspect of this finding, although interpreted cautiously given that it was one measure, is that this skill is often associated with developing psychosocial maturity.

Index Offense:

Mr. Howard is charged with the possession, receiving, and production of child pornography. The details of these events have undoubtedly been made available to the court and will therefore not be repeated in detail in this report. Mr. Howard did not deny the behaviors that led to the charges that he is currently facing. Given that the focus of this evaluation was to assess sexual dysfunction, risk for future sexual misbehavior, and establishing a mental health profile, much of the clinical interview time was spent discussing the factors that likely contributed to Mr. Howard’s path to this offending behavior. From the information provided to this evaluator, including the information discussed with Mr. Howard, it seems that Mr. Howard’s sexual behavior can be clearly defined as voyeuristic. In other words, to this point of his life, his main source of sexual stimulation has been derived from viewing sexually explicit and sexually arousing material that involves individuals other than himself. Due to the fact that his early exposure to this material occurred when he was in late childhood and early adolescence, his first images of sexual interest seemed to reflect this stage of development. His delayed psychosocial maturity and struggles in school placed him in a social network that was behind his natural cohort. This factor had a negative impact on his ability and opportunity to establish age-appropriate relationships and relationship skills.

Mr. Howard recognized that his behavior, social skill limitations, and challenging life circumstances resulted in a negative self-perception and dysfunctional interpersonal perspective. He met his social needs by finding peers that were interested in similar things (e.g., cars, video games) and used these shared interests as a source of conversation. When his lack of social skills could not be adapted using this approach, he occasionally used extreme attention-seeking behaviors in an effort to stay relevant to his friends (e.g., climb construction equipment, drive fast, engage in sexual behavior with male peers, explore bizarre and paraphilic material with peers, etc.) Mr. Howard does not appear to have a deviant sexual preference as it relates to his physical sexual needs, but he has exhibited extremely

poor judgement in relation to the content of material he has viewed or been connected to when bored or seeking novel options for his dysregulated sexual curiosity. Studies with the general adolescent population indicate that while impulsivity seems to decline in a consistent manner and direction beginning at approximately age 10 through early adulthood, risk-taking behaviors tend to have a more curvilinear trajectory. In other words, they increase from early adolescence to mid-adolescence, where they peak at approximately age 17, and then progressively decrease into early adulthood. Individuals such as Mr. Howard, who have documented organic-based deficits in the areas of executive and emotional functioning⁸, would be more likely to have this curvilinear process happen a bit later, therefore increasing the probability that this erratic and dysfunctional behavior occurs in the late adolescent early adult stage. The on-set of this behavior is often correlated with the development of puberty, when hormonal changes (a ten-fold increase in testosterone production of males) as well psychosocial changes (e.g., social mobility due to driver's license, increase peer network and peer influence, decreased adult supervision, etc.) tend to create a conducive combination for reward/sensation seeking types of behavior. Unfortunately, this surge for a need for excitement coupled with increased opportunity to be exposed to high-risk situations occurs at a time when the capacity for self-regulation appears to still be in early development. For Mr. Howard, it was also during this critical stage of development that he lost a stabilizing influence in his life (his grandmother) to cancer and then while still in this vulnerable stage of development, struggled with cancer himself. Though his impulse control seems to be improving, Mr. Howard's higher-level executive functioning processes associated with considering long-term consequences and complex forms of problem solving are still developing. The fact that Mr. Howard recognizes these factors, expresses reasonable remorse, and accepts a notable level of accountability is encouraging. The fact that he began to make an effort to add structure to his unstructured development by pursuing involvement in the military is also encouraging. Mr. Howard also displayed insight into the lack of success with his previous involvement in therapeutic interventions, stating that he now recognizes he resisted any full compliance with these interventions as a passive-aggressive way of resisting his mother's control, which he could only view negatively during that period of his life.

Other Criminal History:

Mr. Howard has no official record of any other criminal behavior in his adult or juvenile history. A review of the Wisconsin Circuit Court Access indicated a traffic violation for speeding⁹. During the clinical interview, Mr. Howard admitted that he had been disciplined while in Shabazz High School for vandalism and Graffiti. He shared that he was not sure if juvenile charges were filed and did not remember discipline beyond that delivered by school officials.

Psychosexual Risk Assessment:

Due to the fact that the primary referral issue involved includes an accusation of sexually criminal behavior, this evaluator chose to assess risk of sexually criminal or deviant behavior as part of this assessment. The instruments used to assess the risk of sexual offending in this assessment were the Static-99r and the Sexual Violence Risk-20 (SVR-20)² assessment.

⁸ A healthy and mature capacity for Executive Functioning and emotional learning is what the term "filter" is referring to in this report.

⁹ Dane County Case Number 2014TR005272

Along with this established measure, a newer measure designed for offenders who are accused of offenses involving child pornography, Child Pornography Offender Risk Tool (CPORT)¹⁰, was also used in this evaluation. Additional empirically identified variables were also examined in relation to assessing risk relevant to this case.

The Static-99r is a 10-item test that utilizes static (unchangeable) factors that have been seen in the literature to correlate with sexual reconviction in adult males. The estimates of sexual and violence recidivism produced by the Static-99r can be thought of as a baseline of risk for violent and sexual recidivism. The most recent version of the Static-99r identifies five levels of risk. These levels are: Very Low (-3 or -2); Below Average (-1 or 0); Average (1, 2 or 3); Above Average (4 or 5); and Well Above Average (6-12). Mr. Barlow earned a score of “2¹¹” on the Static-99r which would place him in the “Average Risk” range. More specifically, of the subjects in the “routine sample” (i.e., randomly selected from the correctional sex offender population) who were used in the research establishing the base rates for recidivism for sexual crimes with the Static-99r who earned a score of “2”, 5.0% of them committed another sexual crime (95% confidence interval 3.4 - 7.4%). In the research that established the recidivism rates identified by the Static-99r, subjects who presented characteristics in need of treatment or other interventions were classified as the “non-routine sample”. Recidivism rates for subjects in this sample group were calculated over 5-year and 10-year span. The rates of recidivism for those in this identified group that earned a score of “2” was 9.1% (95% confidence interval 6.6 - 12.5%) over a five-year period and 14.6% (95% confidence interval 12.2 - 17.3%) over a ten-year period. Given that Mr. Howard’s score is based more on age and developmental variables, than criminogenic variables, this risk range is likely an over-estimate of his actual risk.

The SVR-20 is a 20-item checklist of risk factors for sexual violence that were identified by a review of the literature on sex offenders. The checklist was developed to improve the accuracy of assessments for the risk of future sexual violence. Sexual violence is defined broadly as “actual, attempted, or threatened sexual contact with a person who is non-consenting or unable to give consent.” The SVR-20 specifies which risk factors should be assessed and how the risk assessment should be conducted. The 20 factors essential in a comprehensive sexual violence risk assessment fall into three main categories: Psychosocial Adjustment, History of Sexual Offences, and Future Plans. The actual risk for sexual violence depends on the combination (not just the number) of risk factors present in a specific case. Coding of the SVR-20 involves determining the presence/absence of each factor and whether there has been any recent change in the status of the factor. This item-level information is integrated into a summary judgment of the level of risk (Low, Moderate or High), which can easily be translated into an action plan. Mr. Howard can be considered low

¹⁰ Seto, M.C. & Eke, A. W. (2015). *Predicting recidivism among male child pornography offenders: Development of the Child Pornography Offender Risk Tool (CPORT)*, Law and Human Behavior, 39 (4), pp. 416-429.

² Rettenberger, M., Bower, D.P., & Eher, R. (2011). The predictive accuracy of risk factors in the sexual violence risk-20 (SVR-20). *Criminal Justice and Behavior*, 38(10), 1009-1027. doi: 10.1177/0093854811416908

¹¹ This score of 2 was calculated from the items: Aged 18 to 34.9 (scored +1) and Ever lived with a lover for at least two years? (No=1). His score on the remaining items was 0.

risk for future sexually violent behavior according to his profile obtained by utilizing the SVR-20.

Although it is accurate to suggest that science has yet to produce an empirically established risk assessment tool for Internet-only sexual offenders, there is a risk assessment instrument designed for predicting recidivism among adult male child pornography offenders that is in the earlier stages of development that has shown promising signs of utility. The Child Pornography Offender Risk Tool (CPORT) examines the variables associated with contact child sexual offenders, internet-only child pornography offenders, and those who have engaged in both behaviors. The situation with Mr. Howard will be examined through the research established with the CPORT.

The CPORT is a structured risk checklist designed to predict any sexual recidivism among adult male offenders with a conviction for child pornography offenses. Although in the developmental research phase of exploration, this instrument was initially examined with a sample of 266 adult male child pornography offenders over a 5-year period. Variables associated with higher risk of any type of sexual re-offense included; 1) age at time of the index investigation, with those who were age 35 or younger being coded as higher risk; 2) any prior criminal history, with "yes" being coded as higher risk; 3) any prior or index contact sexual offense history, with "yes" being coded as higher risk; 4) any prior or index failure on conditional release, with "yes" being coded as higher risk; 5) indication of pedophilic or hebophilic interests, with "yes" being coded as higher risk; 6) ratio of boy to girl content in child pornography, with a higher risk associated with more content depicting boys; and 7) ratio of boy to girl content in child nudity in other content (not meeting definition of pornography), with a higher risk associated with more content depicting boys. When viewed through the variables explored with the CPORT and based on the information provided by Mr. Howard during the clinical interview and the investigative materials provided to this evaluator; it would appear that Mr. Howard presents as a low risk for future use of child pornography. Mr. Howard presents with different circumstances, given that he first downloaded the images and videos when he himself was a minor with reported interest in same aged and same sex peers, therefore these considerations were taken into account when scoring the above questions.

Research by Dr. Michael Seto and his colleagues suggest that the majority of on-line offenders (e.g., pornography offenses) do not go on to become contact offenders¹², and for those that do, the risk factors associated with off-line offenders seems to serve as good risk prediction variables (see the results of the Static-99r and SVR-20 presented above.) He also presents as one who is capable of learning from the errors in his behavior. Through his involvement with a trained professional in the areas of sexual relationships and healthy sexual behaviors, he has a prognosis for a prosocial form of sexual expression.

There is another foundation of empirical findings that offers an explanation for behaviors exhibiting deviant interest that are not associated with further criminal behavior. This evaluator is confident these empirical findings are a better explanation for Mr. Howard's behavior. This body of research examines the impact of arousal on decision-making. It has

¹² Seto, M.C., Hanson, R. K., & Babchishin, K.M. (2011). *Contact sexual offending by men with online sexual offenses*, *Sexual Abuse: A Journal of Research and Treatment*, 23(1). 124-145.

been widely accepted that whenever one of our primitive drives are activated (food, drink, sex, etc.), the more arousing the activation, the greater the impact on the individual's ability for relevant and functional judgment. This principle as it relates to sexual behavior is explained by Dr. Dan Ariely and Dr. George Loewenstein (2006)¹³ in their article *The Effect of Sexual Arousal on Sexual Decision Making*. These researchers, utilizing a sample of non-offending subjects (a random sample of male college students), examined the impact of sexual arousal and decision-making through the use of sexually arousing computerized images and factors associated with three (3) areas of sexual decision-making. These tasks associated with sexual decision making required the subjects to exhibit reasoning with (1) the accuracy of how appealing they predicted a wide range of sexual stimuli and activities would be, (2) their willingness to engage in morally questionable behavior in order to obtain sexual gratification, and (3) their willingness to engage in unsafe sex when sexually aroused. Their findings suggested that otherwise well-adjusted and non-criminal individuals exhibited significantly impaired judgment in all three of these decision-making domains. One would not likely use these findings to mitigate the viewing of deviant sexual material by convicted sexual offenders with a history of deviant sexual behavior. However, it can offer a valid explain of how an individual with no criminal inclination, who is browsing appropriate, sexually explicit material, might engage in poor judgment when presented with inappropriate sexual material. Although not necessarily sanctioned publically, many people privately watch sexually arousing material on the Internet in order to receive sexual arousal and gratification. When browsing for sexual stimuli, these individuals may be faced with sexually-related decisions, all possibly leading to positive or negative consequences. Decision-making research has shown that decisions under *ambiguity* (i.e., requiring little thought or effort, such as with Internet browsing where one can basically gain access by clicking on a link or image) are influenced by consequences received following earlier decisions. Sexual arousal is believed to interfere with the decision-making process and could therefore lead to disadvantageous decision-making in the long run. Furthermore, these individuals appear to be less motivated by trait characteristics (such as sexual preference) and more by situational circumstances (exercising a choice when presented in conjunction with other arousing material).

Conclusion:

Mr. Howard does not fit the profile of one who would likely engage in sexually criminal behavior. He certainly has areas in a variety of behavior and intimacy domains of functioning that require work and an effort on his part for modification. Mr. Howard presents as one very open for to participation in treatment. Mr. Howard is responsible for making grievous errors in judgment related to his current circumstances. It is the finding of this evaluator that the judgment and behavior involved with the current circumstances are more the product of the impaired functioning that he has displayed much of his life, than criminal or deviant judgment. Mr. Howard presents as a low risk for future offending and as one capable of learning from the errors in his behavior and benefiting from treatment. The insights and perspectives that he began developing during the most recent stage of his life are indicative of one who portrays an encouraging prognosis for a prosocial lifestyle.

¹³ Ariely, D. and Loewenstein, G. (2006). *The Effect of Sexual Arousal on Sexual Decision Making* *Journal of Behavioral Decision Making*, 19, 87–98.

Although Mr. Howard has engaged in criminal behavior for which he will be held accountable, it seems clear from the material reviewed for this evaluation that exposure to more negative influences and others with psychosocial deficits would likely serve to be counter-therapeutic in this case. Therefore, a structured community-based intervention that fosters age-appropriate relationship building skills, vocational skills, and pro-social decision-making would be most helpful for Mr. Howard. Placement with other offenders and antisocial role models, at this point of his early adulthood, would likely have an “iatrogenic effect”¹⁴. If Mr. Howard is sentenced to incarceration, it should be taken into consideration that a longer period of time is no more likely to be rehabilitative than a shorter sentence. For example, Smith, Gendreau, and Goggin (2009) found that imprisoned offenders had 7% higher recidivism rates than community supervision offenders, and inmates with longer sentences had 7% more recidivism than those with shorter sentences¹⁵. Finally, it is general practice of many prison systems to only offer treatment to the offenders who are within a pre-determined time period (e.g., within five years of their release or eligibility for release) as it relates to their overall sentence. Subsequently, regardless of the length of time an individual receives (e.g., 10 or more years), the length of time they actually spend in treatment is similar to those with significantly shorter sentences.

Report prepared and submitted by:

Nick Yackovich

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¹⁴ Iatrogenic effect is best defined as the unintentional harmful effects of an intervention that is intended to be corrective, but results in increasing the antisocial patterns that were targeted for correction.

¹⁵ Smith, P., Gendreau, P., & Goggin, C. (2009). Correctional treatment: Accomplishments and realities. In Correctional counseling and rehabilitation (7th ed.). Patricia Van Voorhis, Michael Braswell, & David Lester (Eds), Cincinnati, OH, US: Anderson Publishing Co, 315-324, 399, v pp.



Re: Matt HowardNick Yackovich to: Joseph Bugni 08/20/2018 01:34 PM

From: Nick Yackovich <yackovichjr@wisc.edu>

To: Joseph Bugni <Joseph_Bugni@fd.org>

History: This message has been replied to.

Hi Joe,

The behavior with his niece was factored in, but given that it was revealed as part of this initial assessment it did little to enhance his risk to further view porn or to engage in another sexual offense. Had he been arrested for that, sanctioned, and then offended again, the assessment for the follow-up offense would certainly factor in the new information. The Autism Spectrum condition that Howard struggles with impacts his interpersonal and social skills. This will impact his ability to build healthy relationships, but has little direct impact on his current offending. If his offense involved the misread of social or emotional cues, that might be the case. I say direct impact, because any factor that interferes with relationship skills opens the door for unhealthy relationship practices. But I'm hesitant to attribute that toward an offense cycle, given the number of individuals on the Autism Spectrum who don't commit offenses.

Nick

From: Joseph Bugni <Joseph_Bugni@fd.org>

Sent: Friday, August 17, 2018 4:28:17 PM

To: Nick Yackovich

Subject: Matt Howard

Doc.,

My apologies. I have ignored your report and this case for a while. I was consumed with a large trial. I put in for payment and you should get that next week.

But I also had two follow-up questions. On page 11, the first paragraph you use the CPORT analysis and then conclude that he is low-risk. I just want to confirm that you took into account that he actually did physically have contact with his niece: he masturbated next to her and put his penis on her lips, while she slept. Was that your working premise? If so, does the low-risk conclusion still hold? I just want to make sure.

Also, how does Howard's asperger's and being on the autism-spectrum factor into his risk of offending and (more importantly) into this behavior. I know that he's incredibly immature but do they also make a more immediate and concrete impact on what he did?

Please let me know,

Joe